Supreme Court, U. S.
FILED
JUN 7 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1478

H. ROSS PEROT, ELECTRONIC DATA SYSTEMS CORPORATION, duPONT GLORE FORGAN INCORPORATED, WILLIAM K. GAYDEN, MORTON H. MEYERSON, MILLEDGE A. HART, III, MARGOT PEROT, MERVIN L. STAUFFER, PHM & Co., CHARLESTON INVESTMENT COMPANY, E. D. SYSTEMS CORPORATION, DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON AND CHARLES W. COX,

Petitioners,

—against—

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated,

Respondent,

—and—

NEW YORK STOCK EXCHANGE, INC., DOUGLAS E. DeTATA, JOHN J. DOUGHTY, ALLAN BLAIR, AND D. TIPP CULLEN,

Additional Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF OF RESPONDENT NEW YORK STOCK EXCHANGE, INC. IN SUPPORT OF PETITION

RUSSELL E. BROOKS
1 Chase Manhattan Plaza
New York, New York 10005
Attorney for respondent
New York Stock Exchange, Inc.

Of Counsel:

MILBANK, TWEED, HADLEY & McCLOY

IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1478

H. ROSS PEROT, ELECTRONIC DATA SYSTEMS CORPORATION, DUPONT GLORE FORGAN INCORPORATED, WILLIAM K. GAYDEN, MORTON H. MEYERSON, MILLEDGE A. HART, III, MARGOT PEROT, MERVIN L. STAUFFER, PHM & Co., CHARLESTON INVESTMENT COMPANY, E. D. SYSTEMS CORPORATION, DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON AND CHARLES W. COX,

Petitioners,

—against—

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated,

Respondent,

—and—

NEW YORK STOCK EXCHANGE, INC., DOUGLAS E. DETATA, JOHN J. DOUGHTY, ALLAN BLAIR, AND D. TIPP CULLEN,

Additional Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

REPLY BRIEF OF RESPONDENT NEW YORK STOCK EXCHANGE, INC. IN SUPPORT OF PETITION

The Trustee's brief in opposition discounts the Exchange's arguments in support of the petition because neither the Trustee nor any of the twenty defendants presently is a member of the Exchange. However, this observation is beside the point. The Trustee stands in the shoes

of a former Exchange member. Similarly, nearly all of the defendants are former Exchange members or members of the Exchange community entitled to demand arbitration under the Exchange's Constitution and Rules. Each *in his present status* is bound by one or more separate agreements to arbitrate. That none of the parties presently is a member of the Exchange does not alter this fact. The holding of the Court below does not deny arbitration only in cases where the parties are not current members of the Exchange; rather, the decision limits arbitration to "mere . . . industry squabble[s]" regardless of the membership status of the disputants at the time of resolution. (App. A, p. 12a)

The Trustee also suggests that erosion of the important role of national securities exchanges in the regulatory scheme of the Exchange Act should be permitted in cases in which an exchange is named a defendant. Such reasoning contains the potential for abuse (*i.e.*, name an exchange a defendant and avoid arbitration).

The Exchange's status as a defendant should not trigger repudiation of the salutary principle of resolving intra-industry disputes by arbitration before arbitrators knowledgeable in the securities business as contemplated by the self-regulatory scheme. The Exchange does not provide the only forum for arbitration. The Court of Appeals did not speak to the composition of the arbitration panel. The defendants in the District Court acknowledged that arbitration "should not be held under NYSE auspices" (App. B, p. 26a), and the District Court explicitly provided:

> "So as to avoid even the appearance of bias which designation of the Amex might engender, the parties are directed to agree among themselves upon the appropriate arbitration tribunal, in default of which, the Court will, in accordance with the spirit of the Amex constitution, designate the American Arbitration Association." (App. B, p. 34a)

The Trustee's argument that the arbitrators "could not have been drawn from the exchanges" (Br., p. 12), therefore, is incorrect. The Exchange and Amex are precluded as arbitration *forums*. The expertise of individual members of the exchange communities is not precluded. Arbitration as ordered by the District Court would permit a panel of arbitrators to be selected by the parties from the community of either or both exchanges (or NASD or any other exchange), or for such arbitrators to be named to an American Arbitration Association panel. Thus, the benefits of arbitration discussed in the Exchange's main brief (pp. 6-7), as contemplated by Exchange Act § 28(b), could be realized.

CONCLUSION

The petition should be granted and, upon review, the decision below should be reversed.

Respectfully submitted,

RUSSELL E. BROOKS
1 Chase Manhattan Plaza
New York, New York 10005
Attorney for respondent
New York Stock Exchange, Inc.

Of Counsel:
MILBANK, TWEED, HADLEY & MCCLOY

June 7, 1977